

Clearinghouse Rule 08-045

ORDER OF THE DEPARTMENT OF CORRECTIONS

CR 08-045

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to amend DOC 332.19 (1), (3), (4) (a) to (c), (5) (a) 3. and (b) (intro); and to create DOC 332.19 (2) (c), relating to the sex offender registration fee to bring the rule into compliance with s. 301.45 (10), Stats., as amended by 2007 WI Act 20, section 3132.

ANALYSIS PREPARED BY THE DEPARTMENT OF CORRECTIONS

RULE SUMMARY:

- A. Statute interpreted: § 301.45 (10), Stats.
- B. Statutory Authority to Promulgate the Rule: §§ 227.11 (2) and 301.45 (10), Stats.
- C. Explanation of agency authority

The Department of Corrections is responsible for the sex offender registration program. As part of that authority the Department is authorized to establish an annual fee to partially offset its costs.
- D. Related statute or rule: § 301.45, Stats.; §§ DOC 332.03 through DOC 332.13, Wis. Adm. Code

E. Plain Language Analysis

The purpose of the rule is to amend § DOC 332.19 to be consistent with § 301.45 (10), Stats., as amended by 2007 Wisconsin Act 20, section 3132. First, the newly amended § 301.45 (10) expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The newly amended law permits the department to require all persons who are required to register as a sex offender to pay an annual fee. The proposed rule expands the requirement to pay the sex offender registration fee to all persons who are required to register.

Second, the amended § 301.45 (10), Stats., limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision, regardless of whether they were required to register as sex offenders. The proposed rule limits the use of the collected sex offender registration fees to partially offset the costs of monitoring registrants.

Third, the legislature increased the maximum annual rate from \$50 to \$100. The proposed rule increases the annual fee to \$100.

F. Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule

The District of Columbia has a sex offender registration program but does not require a registration fee. (28 CFR Part 811) There is an entry in the Federal Register regarding the application of Megan's Law, in which states are encouraged to charge a registration fee to mitigate costs. 62 Fed. Reg. 39009 (03/08/2002). The federal government has a registration requirement but does not assess a fee. (Adam Walsh Child Protection and Safety Act of 2006 (PL 109-248, 2006 HR 4472); Sex Offender Registration and Notification Act, 42 USCA § 16901, et seq.)

G. Comparison of similar rules in adjacent states (Illinois, Indiana, Iowa, Michigan, Minnesota)

1. Illinois has established a \$20.00 initial registration fee and a \$10.00 annual renewal fee. The fees are to be used by the registering agency "for official purposes." (730 ILCS 150/3(c)(6))
2. Indiana has established a sex offender registration fee which the county of residence can assess. The fee cannot exceed \$50.00. (IC 36-2-13-5.6 (a) (1) A) In addition, a fee of \$5.00 is assessed each time the registrant changes addresses. (IC 36-2-13-5.6 (a) (1) B)
3. Iowa has established a \$10.00 initial sex offender registration fee and a \$10.00 fee for each change of registration. Fees are paid to the sheriff to defray the costs of duties related to the registration of persons. (Iowa Code § 692A.6 (2005)) Also, Iowa assess a one time civil penalty of \$200.00 at the time of conviction. (Iowa Code § 692A.6 (1) & (2))

4. Michigan has established a \$35.00 initial registration fee. (MCLS § 28.725a (2006)) In addition, Michigan requires individuals to carry a personal identification card for which a fee of \$12.00 is assessed. (MCLS § 28.292 (12))
 5. Minnesota has not established a sex offender registration fee.
- H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.

This rule does not affect small businesses. The rule imposes a registration fee on persons who are required to register as a sex offender to partially offset the department's costs in monitoring them as sex offenders.

- I. Any analysis and supporting documents that DOC used in support of the department's determination of the proposed rule's effect on small businesses or that was used when the DOC prepared an economic impact report.

No economic impact report was required.

- J. Effect on small businesses: There is no expected effect on small businesses under § 227.114, Stats.

- K. Agency contact person (including email and telephone):

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5049, kathryn.anderson@wisconsin.gov.

Comments on the proposed rule which were received through the hearing process, including written, oral, and testimony were considered if they were received by July 31, 2008.

TEXT OF RULE

SECTION 1. Section DOC 332.19 (1) is amended to read:

DOC 332.19 (1) APPLICABILITY. A person who is required to register as a sex offender under s. 301.45, Stats., ~~and who is in the department's custody or who is on probation, parole, or extended supervision~~ shall be charged a registration fee to partially offset the costs of monitoring ~~offenders~~ registrants.

SECTION 2. Section DOC 332.19 (2) (c) is created to read:

DOC 332.19 (2) (c) "Registrant" means a person required to register as a sex offender under s. 301.45, Stats.

SECTION 3. Sections DOC 332.19 (3), (4) (a), (b), and (c), (5) (a) 3. and (b), and (6) (intro) are amended to read:

DOC 332.19 (3) FEE. The sex offender registration fee shall be ~~\$50.00~~ \$100.00 on an annual basis.

DOC 332.19 (4) (a) Record all registration fees paid by ~~an inmate or offender~~ a registrant.

(b) Provide the ~~inmate or offender~~ registrant access to a copy of the record of payments to verify receipt of payments.

(c) Advise the ~~inmate or offender~~ registrant of nonpayment of registration fees.

DOC 332.19 (5) (a) 3. Provide the ~~inmate or offender~~ registrant with a copy of the sex offender registration fee payment procedures.

DOC 332.19 (5) (b) The ~~inmate or offender~~ registrant shall pay the sex offender registration fee to the department according to the procedures established by the department.

DOC 332.19 (6) (intro) DEPARTMENT ACTION WHEN AN ~~INMATE OR OFFENDER~~ A REGISTRANT FAILS TO PAY REGISTRATION FEE. The department may use any of the following actions in any order when ~~an inmate or offender~~ a registrant fails to pay the sex offender registration fee:

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____

Rick Raemisch
Secretary